



LIABILITY, IMMUNITY, AND THE BENEFITS OF WAR: NEW PERSPECTIVES ON THE MORAL STATUS OF CIVILIANS

THE SEVENTH ANNUAL ELAC WORKSHOP ON WAR

1 – 2 September 2016

Sala Europa
Villa Schifanoia
European University Institute
Florence, Italy

PROGRAMME

Thursday 1st September

9:30 – 9:45 Arrival and coffee

9:45 – 11:15 **Session 1: Liability without Causation**

Victor Tadros

The paper first raises a general outcome luck egalitarian challenge to the idea that causation is relevant to liability. It then suggests that even if this challenge can be met, the general idea that causing a threat is a necessary condition of liability to defensive harm to avert that threat should be rejected. It explores one set of cases where reliance on causation is especially implausible: cases where the person would have posed a threat, but was preempted by others. It shows the relevance of these cases to war in the case of voting and the provision of resources.

Discussant: Massimo Renzo

Chair: BJ Strawser

11:15 – 11:30 Coffee break

11:30 – 13:00 **Session 2: Non-Causal Liability: Culpability Unbound**

Lars Christie

Causal liability accounts standardly require that for culpability to be relevant to liability to preventive harm, it has to be specifically tied to the discrete threat the liable person is causally responsible for: whether a person who is now threatening someone is culpable for a separate offense should not have bearing on how much preventive harm she is liable to in order to avert the threat she is currently posing. I refer to this as the relevance constraint on culpability. In my paper, I defend a non-causal liability account and challenge the relevance constraint on culpability. I argue that the implication of culpability to liability to preventive harm is "global" and that non-related culpability in principle can

affect a person's liability in a different situation from that in which the culpability arose. Even so, I claim that epistemic limitations seldom make it permissible to allow beliefs about prior and or unrelated culpability affect decisions about preventive harm

Discussant: David Rodin

Chair: Jennifer Welsh

13:00 – 14:00 Lunch

14:00 – 15:30 Session 3: Proportionality, Contingent Pacifism, and Risk in War

Saba Bazargan-Forward

Some revisionist opponents of proportionality-based contingent pacifism assess candidate standards of risk-imposition in war by whether it licenses generally accepted activities and policies in the context of domestic civilian life. But I will argue that this method of assessment is procrustean for two reasons. The first is a familiar one: imposing a risk on an innocent can be permissible if doing so is necessary to make that individual better off (in terms of expected welfare) than she otherwise would have been. The second reason is less familiar: individuals in a society together permissibly lower the standards for miniscule lethal risk-imposition when the risk is reciprocally imposed and when doing so is generally necessary for the individuals to pursue and achieve otherwise permissible ground-level projects. These two principles enjoins us to accept greater risks toward innocents in the context of domestic civilian life than in the context of war. This suggests that revisionism about war tends toward proportionality-based contingent pacifism.

Discussant: Jeremy Davis

Chair: Janina Dill

15:30 – 15:45 Coffee

15:45 – 17:15 Session 4: Beneficiaries, Harm, & Fairness: Justifying Harm to Noncombatants

Heather M. Roff

Recently, some authors argue that noncombatant who benefit from defensive force, particularly in rescue-like activities such as humanitarian intervention, are obligated to bear the costs of that defense. This “beneficiary thesis,” however, requires some coherent ground of obligation, and it is not clear from its various formulations how such an obligation is generated. This paper canvasses the three most common grounds of obligation, gratitude, consent and fairness, respectively, and argues that the beneficiary thesis fails on each ground to obligate individuals to bear their costs of defense in the way envisioned by beneficiary theorists. The best argument for a coherent account of the thesis, I argue, requires a concomitant background theory of justice as fairness. Yet, even on fairness accounts, individuals cannot be obligated under principles of fairness unless they are part of a cooperative scheme, and they knowingly accept the benefits of this scheme. Indeed, this explains why ideas such as consent, fairness and free-riding are key normative components of the beneficiary thesis as it stands. However, this account of fairness will rarely permit the kind of harm to noncombatants that proponents attempt to justify. Indeed, this is because the kind of cooperative scheme that a beneficiary would be part of looks suspiciously like a political community. However, if this is so, then we have a concomitant need for a theory of political obligation, as well as broader commitments for a cosmopolitan theory of justice.

Discussant: Cheyney Ryan

Chair: Mike Robillard

17:30 – 18:30 Drinks reception

19:00 Conference dinner

Friday 2 September

9:30 – 9:45 Arrival and coffee

9:45 – 11:15 **Session 1: Civilian Immunity without the Doctrine of Double Effect**

Yitzhak Benbaji

This essay explains the difference between incidental and intentional killing in war. A new account of the distinction is needed because the standard, deontologist, explanation of the distinction appeals to the doctrine of double effect. DDE is very controversial. Doing without it would be preferable.

I show that, properly understood, consequentialism introduces a moral distinction between harmfully using a person as a means towards achieving the greater good in contexts of uncertainty, and foreseeably allowing or doing an identical harm while pursuing the greater good, in such contexts.

Discussant: Susanne Burri

Chair: David Rodin

11:15-11:30 Coffee

11:30- 13:00 **Session 2: Physical and Moral Shields**

Adil Ahmad Haque

Moral shields are people whose proximity to the source of an unjust threat is intended to create a moral obstacle to the use of defensive force. By contrast, physical shields are people whose proximity to the source of an unjust threat is intended to create a physical obstacle to the use of defensive force. In an earlier paper, I argued that some voluntary physical shields jointly pose unjust threats, together with those who directly pose unjust threats, and are morally liable to defensive harm. However, I also argued that voluntary moral shields are not morally liable to defensive harm, though the fact that they could easily avoid harm reduces the moral wrongfulness of harming them. Further reflection indicates that things are not so simple. On one hand, the view that voluntary moral shields are morally liable to defensive harm seems self-defeating. On the other hand, it is not entirely clear what kind of physical obstacle voluntary physical shields intend to create or succeed in creating, let alone the moral consequences of their intentions or success. Finally, there are cases in which the same person may be a moral shield or a physical shield, depending on causal facts outside their control, casting doubt on the moral relevance of the moral/physical distinction. In this paper, I hope to examine some of these puzzles in greater depth, and perhaps make some progress toward their resolution.

Discussant: Janina Dill

Chair: Helen Frowe

13:00 – 14:00 **Lunch**

14:00 – 15:30 Session 3: Eliminative Killing and the Targeting of Noncombatants: On the Way Threatening Can Cause Loss of Rights Without Liability

Alec Walen

Noncombatants sometimes facilitate combatants waging war unjustly, and killing such noncombatants would sometimes help to eliminate the they pose. In such cases, the claim those noncombatants have not to be eliminatively killed is weaker than their claim not to be killed as a side effect of hitting other legitimate military targets. Moreover, the justifiability of eliminatively killing them does not depend on their being liable to being killed; more fundamentally it reflects the way their nature as threats impacts the strength of their claims, which impacts how those claims compete with the claims of the innocent victims of the unjust combatants.

Discussant: Joseph Bowen

Chair: Heather Roff

15:30 – 15.45 Coffee

15:45 – 17.15 Session 4: Technology and moral vacuums in just war thinking

Elke Schwarz

Our contemporary condition is deeply infused with scientific-technological rationales. These influence and shape our moral reasoning on war, including the moral status of civilians. In this paper, I discuss how technology shapes and directs the moral choices available to us by setting parameters for moral deliberation. I argue that technology is an actant of moral significance to just war thinking, yet this is often overlooked in attempts to assess who is liable to harm in war and to what extent. This omission produces an undue deference to technological authority, reducing combatants, civilians, and scenarios to data points. If we are to develop a maximally restrictive framework for harming civilians in war, which I think should be a goal of just war thinking, then it is imperative that the scientific-technological dimension of contemporary war is given due attention.

Discussant: Laura Valentini

Chair: Massimo Renzo

The research leading to these results has received funding from the European Research Council under the European Union's Seventh Framework Programme (FP/2007-2013) / ERC Grant Agreement n. [340956 - IOW]